(6)

No. 99-116

Supreme Court, U.S.
FILED
DEC 15 1999
CLERK

In The

Supreme Court of the United States

JEFFREY ALLAN FISCHER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

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Petition For Certiorari Filed July 15, 1999
Certiorari Granted November 1, 1999

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RELEVANT DOCKET ENTRIES

U.S. District Court
Middle District of Florida (Orlando)

* * *

12/7/95	1	INDICTMENT as to Jeffrey Allan Fischer – counts 1-6. (slz) [Entry date 12/13/95]

* * *

6/12/96	51	SUPERSEDING INDICTMENT – counts 1s, 2s, 3s, 4s-5s, 6s, 7s-13s. (nrs) [Entry date 06/12/96]

* * *

6/17/96	55	NOTICE OF ARRAIGNMENT on Superseding Indictment: Set arraignment on Superseding Indictment for 11:30 6/26/96 before Magistrate Judge David A. Baker. (nrs) [Entry date 06/17/96]

* * *

6/26/96	60	ARRAIGNMENT on Superseding Indictment held on 06/26/96 Defendant pled not guilty before Magistrate Judge David A. Baker. Defense counsel requests additional time to file discovery motions as they relate to the superseding indictment. Court instructs defense counsel to file any motions as soon as possible. Tape 96-55 (3875-4055) (nrs) [Entry date 06/27/96]

* * *

7/15/96	80	JURY TRIAL (1st DAY) before Judge Anne C. Conway held on 07/15/96. Court Reporter: Rita Meyer (nrs) [Entry date 07/16/96]

* * *

7/16/96 83 JURY TRIAL (2nd DAY) before Judge Anne C. Conway held on 07/16/96. Court Reporter: Rita Meyer (nrs) [Entry date 07/17/96]

* * *

7/17/96 85 JURY TRIAL (3rd DAY) before Judge Anne C. Conway held on 07/17/96. Court Reporter: Rita Meyer (nrs) [Entry date 07/18/96]

* * *

7/18/96 87 JURY TRIAL (4th DAY) before Judge Anne C. Conway held on 07/18/96. Court Reporter: Rita Meyer (nrs) [Entry date 07/19/96]

* * *

7/18/96 94 JURY VERDICT: Guilty as to Counts 1s, 2s, 3s, 4s-5s, 6s, 7s-13s. (nrs) [Entry date 07/19/96]

* * *

10/25/96 111 SENTENCING before Judge Anne C. Conway. Counts 1s, 2s, 3s, 4s-5s, 6s, 7s-13s: 65 months imprisonment; 3 years supervised release; 100 hours community service, participate in a program of mental health treatment and contribute to costs of such program; $1,200,000.00 restitution jointly and severally with others ordered to pay back this amount; $650 special assessment, Counts 1-2, 3, 4-5, 6: DISMISSED. Fine and costs of imprisonment/supervision waived. Defendant shall surrender to designated

institution on or before 2:00 p.m. between 01-02-97 and 01-09-97. Court Reporter: Rita Meyer (nrs) [Entry date 10/28/96]

* * *

11/4/96 115 NOTICE OF APPEAL appealing [114-1] judgment order FILING FEE $105.00 RECEIPT #63406 Certificate of Readiness due on 11/19/96 for Jeffrey Allan Fischer (rdo) [Entry date 11/08/96]

* * *

4/16/97 124 MOTION with memorandum in support by Jeffrey Allan Fischer for new trial, request for oral argument and evidentiary hearing. (maa) [Entry date 04/16/97]

* * *

7/8/97 130 ORDER denying [124-1] motion for new trial and [124-2] motion request for oral argument and evidentiary hearing; granting [26-1] motion to supplement the record. (Signed by Judge Anne C. Conway) (map) [Entry date 07/09/97]

* * *

7/18/97 132 NOTICE OF APPEAL appealing [130-1] order FILING FEE $105.00 RECEIPT #66021 Certificate of Readiness due on 8/4/97 for Jeffrey Allan Fischer (rdo) [Entry date 07/18/97]

* * *

11/25/97 139 MOTION with memorandum in support by Jeffrey Allan Fischer for new trial,

Request for Oral Argument and Evidentiary Hearing. (rdo) [Entry date 11/28/97]

* * *

1/6/98 142 ORDER as to Jeffrey Allan Fischer denying [139-1] motion for new trial; denying [138-1] motion renewed motion for bond pending appeal. (Signed by Judge Anne C. Conway) (rdo) [Entry date 01/06/98]

1/16/98 143 NOTICE OF APPEAL appealing [142-1] order FILING FEE $105.00 RECEIPT #67951 Certificate of Readiness due on 2/2/98 for Jeffrey Allan Fischer (rdo) [Entry date 01/16/98]

* * *

United States Court of Appeals for the Eleventh Circuit

DKT# 96-3587

8. OPINION INFORMATION - Pub XX

3/4/99* Opinion Issued

[XXX] Affirmed

FMH Signed

*Opinion filed in 96-3587, 972877 & 98-2091

9. JUDGMENT AND MANDATE INFORMATION

3/4/99 Judgment Entered

10. REHEARING INFORMATION

3/24/99ar Petition for Rehearing 3/25/99(J)

Apt X Panel X En Banc X

DKT# 97-2877

8. OPINION INFORMATION - Pub XX

3/4/99* Opinion Issued

[XXX] Affirmed

FMH Signed

*Opinion filed in 96-3587, 972877 & 98-2091

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DKT# 98-02091

8. OPINION INFORMATION - Pub XX

3/4/99* Opinion Issued

[XXX] Affirmed

FMH Signed

*Opinion filed in 96-3587, 972877 & 98-2091

9. JUDGMENT AND MANDATE INFORMATION

3/4/99 Judgment Entered

10. REHEARING INFORMATION

3/24/99ar Petition for Rehearing 3/25/99(J)

Apt X Panel X En Banc X

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA	No. 95-239-Cr-Orl-22(S1)
	18 U.S.C. § 666(a)(1)(A)
v.	18 U.S.C. § 666(a)(2)
	18 U.S.C. § 1341
JEFFREY ALLAN FISCHER	18 U.S.C. § 1343
	18 U.S.C. § 371
	18 U.S.C. § 1957
	18 U.S.C. § 982 – Forfeiture
	(Filed June 12, 1996)

The Grand Jury charges:

COUNT ONE

[Fraud Involving Organization Receiving Federal Funds]

The Entities and Individuals

1. At all times material to this Indictment, the West Volusia Hospital Authority ("WVHA") was a special taxing district of the State of Florida established pursuant to Fla. Stat. Ann. Chapter 189, to provide health care services to the citizens of Volusia County, Florida.

2. At all times material to this Indictment, WVHA was:

a. a "unit of local government" within the meaning of Fla. Stat. Ann. § 218.31(1);

b. an "organization" within the meaning of 18 U.S.C. § 666(a); and

c. a local "government agency" within the meaning of 18 U.S.C. § 666(d)(2), specifically an "authority" established and subject to control by a government or governments for the execution of a governmental or intergovernmental program.

3. WVHA received in a one-year period, specifically between October 1, 1992 and September 30, 1993, benefits in excess of $10,000 under a federal program involving a grant, contract, subsidy, loan guarantee, insurance, and other forms of federal assistance, including, but not limited to, Medicare, Medicaid, CHAMPUS, and Veterans Administration payments.

4. At all times material to this Indictment, Quality Medical Consultants, Inc. ("QMC") was a Florida corporation with its principal place of business in Orlando, Florida. For a contingent fee, QMC reviewed hospital billings and accounts receivable, and advised hospitals on means of increasing their billings and collections for medical care.

5. At all times material to this Indictment, JEFFREY ALLAN FISCHER ("FISCHER") was the President and Chief Executive Officer of QMC.

6. At all times material to this Indictment, Robert Caddick ("Caddick") was the Chief Financial Officer of WVHA. Caddick was an "agent," "officer," and "employee" of WVHA, and a person authorized to act on behalf [sic] WVHA, within the meaning of 18 U.S.C. § 666(d)(1).

The Charge

7. Beginning on or about January 1, 1993 and continuing through on or about November 30, 1995, in Volusia, Seminole, and Orange Counties, Florida, in the Middle District of Florida, and elsewhere,

JEFFREY ALLAN FISCHER

the defendant herein, knowingly and intentionally obtained by fraud, and otherwise without authority knowingly converted to the use of a person other than the rightful owner, $1.2 million in money owned by, and under the care, custody, and control of WVHA.

All in violation of Title 18, United States Code, Sections 666(a)(1)(A) and 2.

COUNT TWO

[Kickback Involving Organization Receiving Federal Funds]

1. Paragraphs 1 through 6 of Count One are realleged and incorporated as if fully set forth in this paragraph.

2. Beginning on or about January 1, 1993 and continuing through on or about November 30, 1995, in Volusia, Seminole, and Orange Counties, Florida, in the Middle District of Florida, and elsewhere,

JEFFREY ALLAN FISCHER

the defendant herein, knowingly, intentionally, and corruptly gave, offered, and agreed to give $10,000 to Caddick and Caddick's mother, with intent to influence and reward Caddick, an agent of WVHA, in connection with a transaction of WVHA involving $1.2 million.

All in violation of Title 18, United States Code, Sections 666(a)(2) and 2.

COUNT THREE

[Mail Fraud]

1. Paragraphs 1, 4, 5, and 6 of Count One are realleged and incorporated as if fully set forth in this paragraph.

The Scheme and Artifice to Defraud

2. Beginning on or about January 1, 1993 and continuing through on or about November 30, 1995, in Volusia, Seminole, and Orange Counties, Florida, in the Middle District of Florida, and elsewhere, defendant FISCHER and Caddick devised and intended to devise, a scheme and artifice to defraud WVHA out of money, and to obtain such money by means of false and fraudulent pretenses, representations, and promises, and the concealment of materia! facts.

3. In 1993 QMC was in debt and unable to obtain capital from banks. It was part of the scheme to defraud that FISCHER and Caddick agreed that FISCHER would cause QMC to pay Caddick and Caddick's mother a

$10,000 kickback or gratuity, and that Caddick would cause WVHA to loan $1.2 million to QMC.

4. It was also part of the scheme to defraud that FISCHER caused QMC to post as security for the loan a bogus letter of credit for $1.2 million purportedly issued by First Asian Development Bank ("FADB") of Vanuatu, a Pacific island.

5. It was part of the scheme and artifice to defraud that FISCHER and Caddick knowingly and intentionally made statements and caused the distribution of documents which they knew contained false and fraudulent representations and promises in order to induce WVHA to pay $1.2 million to QMC, and to conceal the purpose of the $10,000 payment to Caddick and Caddick's mother. The false and fraudulent representations and promises included the following, which FISCHER and Caddick then and there well knew to be false:

a. That on or about June 30, 1993, FISCHER executed a letter of agreement with Caddick in which FISCHER pledged the accounts receivable of QMC, which FISCHER knew were previously pledged to Physicians Medical Reviewers, Inc.

b. In or about June 1993, Caddick showed a draft letter of credit to be issued by FADB to managing directors of WVHA in order to gain approval for the $1.2 million loan to QMC, when Caddick knew that such a loan was illegal under Florida law; Caddick did not disclose this fact to the managing directors that he showed the draft letter of credit to.

c. On or about August 25, 1993, FISCHER completed a QMC check request/voucher payable to Stella Greenfield in the amount of $10,000, reflecting that the payment was for consulting fees, when FISCHER knew that Stella Greenfield had not performed such work.

d. In or about January 1994, FISCHER submitted an invoice dated August 1, 1993 (Invoice No. 93-01) prepared by Caddick, to QMC's accounting department, which reflected that Stella Greenfield had rendered services to QMC, when FISCHER knew that Stella Greenfield had performed no such services.

e. On or about June 27, 1994, FISCHER caused a draft in the amount of $1.2 million from European American Capital Corp. ("EACC") to be delivered to QMC with instructions for the draft to be endorsed and made payable to WVHA, when FISCHER knew that the draft would not be paid by FADB.

f. In or about October 1994, Caddick asked Charles Kramer to sign a backdated letter of agreement which showed that Caddick was due payment for marketing a computer program for QMC in order to justify the $10,000 payment made to Caddick and Caddick's mother, when Caddick knew that he was not due any money under the letter of agreement because the computer program was never marketed.

6. In truth and fact, as FISCHER and Caddick then and there well knew, the money that WVHA paid to QMC was to be used to pay a kickback or gratuity to Caddick, and was to be used for the enrichment of FISCHER and Caddick and parties having a relationship with FISCHER and Caddick and otherwise.

7. Shortly after receipt of the $1.2 million loan, FISCHER caused QMC to substantially increase the salaries of the QMC officers, including FISCHER, and to further disburse the $1.2 million as follows:

PAYEE	AMOUNT
Internal Revenue Service	$ 70,912.42
Olde Discount stockbrokers	$ 325,000.00
Barnett Securities, Inc.	$ 303,000.00
Tarpel Music	$ 75,000.00
Bill and Stephanie Norvell	$ 60,000.00
FADB Resources (HK) Ltd.	$ 48,000.00
CKJF, Inc.	$ 48,904.48
Homer N. Allen	$ 31,402.89
Barnett Bank	$ 121,170.14
Physicians Medical Reviewers, Inc.	$ 72,765.38
TOTAL	$1,277,325.45

The Mailing

8. On or about the date listed below, in Volusia, Seminole, and Orange Counties, Florida, in the Middle District of Florida, and elsewhere, for the purpose of executing and attempting to execute the above scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises,

JEFFREY ALLAN FISCHER

the defendant herein, did knowingly cause to be sent and delivered by the United States mail, and did knowingly cause to be taken and received from the United States mail, the following matter and thing:

Count	Date	Matter/Address	From
Three	9/3/93	$10,000 check payable to Stella Greenfield, 14507 South Kolin Avenue, Midlothian, IL 60445	JEFFREY FISCHER 5104 Orange Blossom Trail Suite 103 Orlando, FL 32810

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS FOUR AND FIVE

[Wire Fraud]

1. Paragraphs 1, 4, 5, and 6 of Count One and Paragraphs 2 through 4 of Count Three are realleged and incorporated as if fully set forth in this paragraph.

2. On or about the dates listed below, in Volusia, Seminole, and Orange Counties, Florida, in the Middle District of Florida, and elsewhere, for the purpose of executing and attempting to execute the above scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises,

JEFFREY ALLAN FISCHER

the defendant herein, did knowingly transmit and cause to be transmitted in interstate and foreign commerce, by means of a wire communication, certain signs, signals, and sounds, that is:

Count	Date	Wire/To	From
Four	6/23/93	Telex purporting to be letter of credit to QMC, Orlando, FL	Sigma Alpha, Philadelphia, PA
Five	7/13/93	$48,000 wire transfer to FADB, Hong Kong	Barnett Bank, Orlando, FL

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT SIX

[Conspiracy]

1. Paragraphs 1 through 6 of Count One and Paragraphs 2 through 4 of Count Three are realleged and incorporated as if fully set forth in this paragraph.

The Conspiracy and its Objects

2. Beginning on or about January 1, 1993, and continuing through on or about November 30, 1995, in Volusia, Seminole, and Orange Counties, Florida, in the Middle District of Florida, and elsewhere,

JEFFREY ALLAN FISCHER

the defendant herein, knowingly and wilfully conspired and agreed with other persons both known and unknown to the Grand Jury, to commit the following offenses against the United States:

a. To knowingly and intentionally obtain by fraud, and otherwise without authority knowingly convert to the use of a person other than the rightful owner, money owned by, and under the care, custody, and control of an organization and government agency, in violation of 18 U.S.C. § 666(a)(1)(A);

b. To corruptly give, offer, and agree to give money with intent to influence or reward an agent of an organization and government agency in connection with a transaction, in violation of 18 U.S.C. § 666(a)(1)(B);

c. To corruptly solicit and demand for the benefit of a person, and accept and agree to accept money intending to be influenced and rewarded in connection with a transaction, in violation of 18 U.S.C. § 666(a)(2);

d. To knowingly cause to be sent and delivered by the United States mail, and knowingly cause to be taken and received from the United States mail, certain matters for the purpose of executing a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, in violation of 18 U.S.C. § 1341; and

e. To knowingly cause to be transmitted by wire in interstate and foreign commerce, writings, signs, signals, pictures, or sounds for the purpose of executing a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, in violation of 18 U.S.C. § 1343.

Manner and Means

3. The defendant carried out the conspiracy in the following manner, and by the following means:

a. FISCHER and Caddick agreed that Caddick would loan FISCHER and QMC $1.2 million of WVHA's funds in exchange for a $10,000 payment from FISCHER and QMC; the payment was to be concealed by making it falsely appear to be payment for consulting services.

b. Caddick showed documents to board members of WVHA which made the loan appear to be legitimate and secured by property and assets, which in fact, the letter of credit issued by FADB and provided by FISCHER, which was to secure the loan, was bogus and worthless, and the accounts receivable of QMC which were also to secure the loan had already been pledged to another entity; none of these facts were disclosed to WVHA's board members.

c. Caddick did not disclose to the WVHA board members the fact that he was accepting a $10,000 payment from FISCHER and QMC.

d. Upon WVHA's demand for repayment of the $1.2 million loan, FISCHER pretended to attempt to cause QMC to repay the loan by obtaining a bogus draft issued by European American Capital Corp. and drawn on FADB in the amount of $1.2 million; this draft was worthless and was never honored.

Overt Acts

4. In furtherance of the conspiracy, and to achieve the objects thereof, and to conceal the monies illegally

derived from his illegal acts and the commission of his illegal acts, the defendant and his co-conspirators, both known and unknown to the Grand Jury, committed and caused to be committed, in the Middle District of Florida and elsewhere, the following overt acts:

a. In early 1993, Kurt Reichenberger ("Reichenberger") visited FISCHER and Charles Kramer at QMC's offices in Orlando, Florida.

b. In or about April or May 1993, FISCHER talked to Reichenberger about obtaining a letter of credit from FADB to secure a loan for QMC.

c. During a conversation with FISCHER in or about May 1993, Caddick offered to loan $1.2 million of WVHA funds to QMC in exchange for $10,000.

d. In or about June 1993, Caddick showed documents pertaining to the $1.2 million loan to managing directors of WVHA.

e. FISCHER and Caddick signed a letter of agreement and performance agreement on June 30, 1993, in which FISCHER pledged QMC's accounts receivable to secure the $1.2 million loan.

f. In or about June 1993, FISCHER obtained a letter of credit from FADB and sent it to NationsBank in Miami, Florida.

g. In or about July 1993, Caddick caused $1.2 million to be transferred from the State of Florida Investment Pool in Tallahassee, Florida to WVHA's account at NationsBank in Deland, Florida, then wired to QMC's account at Barnett Bank in Orlando Florida, after being told by a representative of NationsBank that the letter of

credit from FADB was not signed or in the proper format to be honored.

h. In or about August 1993, Caddick requested that FISCHER pay him $10,000.

i. In or about August 1993, FISCHER prepared a QMC check request/voucher, requesting that a check for $10,000 be issued to Stella Greenfield, Caddick's mother, purportedly as a consulting fee.

j. In or about September 1993, FISCHER mailed the $10,000 check to Stella Greenfield in Midlothian, Illinois.

k. In or about September 1993, Stella Greenfield deposited the $10,000 check into her personal account and, at Caddick's request, wrote and mailed two checks to Caddick in the amounts of $4,700 and $5,000.

l. Following WVHA's demand for repayment of the $1.2 million loan in or about June 1994, FISCHER obtained and sent a document purporting to be a draft in the amount of $1.2 million to QMC.

m. In or about January 1994, Caddick gave FISCHER a phony invoice which indicated that Stella Greenfield provided consulting services to QMC, which FISCHER gave to QMC's accounting department.

n. In or about October 1994, Caddick asked Charles Kramer to sign a backdated letter of agreement which showed that Caddick was due payment for marketing a computer program for QMC.

All in violation of Title 18, United States Code, Section 371.

COUNTS SEVEN THROUGH THIRTEEN

(Money Laundering)

1. Paragraphs 1 through 6 of Count One and Paragraphs 2 through 7 of Count Three are realleged and incorporated as if fully set forth in this paragraph.

2. In or about July 1993, FISCHER fraudulently caused $1.2 million to be wired from WVHA's account at NationsBank in Deland, Florida, to QMC's account at Barnett Bank in Orlando, Florida, account number 2831459824.

3. On or about the dates listed below, in Orange County, Florida, in the Middle District of Florida, and elsewhere,

JEFFREY ALAN FISCHER

the defendant herein, did knowingly engage and attempt to engage, and instruct other individuals to engage and attempt to engage, in monetary transactions in property derived from specified unlawful activity, that is, fraud involving an organization receiving federal funds, in violation of 18 U.S.C. § 666(a)(1)(A), as follows:

Count	Date	Amount	Account	Check/Wire
Seven	7/2/93	$75,000.00	From Barnett Bank Account #2831459824 Orlando, Florida to Frankford Bank Account #216-729-7	Wire Transfer on July 2, 1993 payable to Tarpal Music drawn on QMC account
Eight	7/8/93	$21,154.26	From Barnett Bank Account #2831459824 Orlando, FL to First National Bank of Central Florida Account #0-00-201428-9	Check #36215 payable to CKJF, Inc. and drawn on QMC account
Nine	7/8/93	$303,065.00	From Barnett Bank Account #2831459824 Orlando, FL to Barnett Securities Account #000-203017	Transfer on July 8, 1993 to Barnett Securities and drawn on QMC account
Ten	7/9/93	$60,000.00	From Barnett Bank Account #2831459824 Orlando, FL to Citibank Arizona Account #101 710 1419	Wire Transfer on July 9, 1993 payable to Bill and Stephanie Norvell
Eleven	7/13/93	$48,000.00	From Barnett Bank Account #2831459824 Orlando, FL to Bank of China Account #012-875-9209690-3	Wire Transfer on July 13, 1993 payable to FADB Resources (HK) Ltd. and drawn on QMC account
Twelve	7/14/93	$27,750.22	From Barnett Bank Account #2831459824 Orlando, FL to Bank of Central Florida Account #0-00-201428-9	Check #36240 payable to CKJF, Inc. and drawn on QMC account
Thirteen	7/25/93	$325,000.00	From Barnett Bank Account #2831459824 Orlando, FL to Olde Discount Corp. Account #229-00381	Check #36298 payable to Olde Discount Corp.

All in violation of Title 18, United States Code, Section 1957.

FORFEITURES

1. The allegations contained in Counts Seven through Thirteen of this indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 982.

2. The defendant, JEFFREY ALLAN FISCHER, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2), any and all right, title, and interest he may have in any property, real and personal, involved in violations of Title 18, United States Code, Section 1957, alleged in Counts Seven through Thirteen of this indictment, and any property traceable to such property.

3. If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1)(B).

A TRUE BILL,

/s/ Illegible
Foreman

CHARLES R. WILSON
United States Attorney

By /s/ Cynthia Hawkins Collazo
Cynthia Hawkins Collazo
Assistant United States Attorney

By /s/ Rick L. Jancha
Rick L. Jancha
Managing Assistant U.S. Attorney

No. _____

UNITED STATES DISTRICT COURT

MIDDLE *District of* FLORIDA

ORLANDO *Division*

THE UNITED STATES OF AMERICA

vs.

JEFFERY ALLAN FISCHER

INDICTMENT

Violations: 18 U.S.C. § 666(a)(1)(A)
18 U.S.C. § 666(a)(2)
18 U.S.C. § 1341
18 U.S.C. § 1343
18 U.S.C. § 371
18 U.S.C. § 1957

A true bill.

Illegible
Foreman.

Filed in open court this 12th ***day***

of June, ***A.D. 1996***

/s/ Sally A. Coffey
Clerk.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, VS. JEFFREY ALLAN FISCHER, DEFENDANT.	CASE NO: 95-239-CR-ORL-22 ORLANDO, FLORIDA JULY 17, 1996

TRIAL PROCEEDINGS

BEFORE THE HONORABLE ANNE C. CONWAY
UNITED STATES DISTRICT JUDGE, AND A JURY

* * *

[Testimony of Robert Bowman]

[p. 574] HIS OPINION IS IRRELEVANT.

THE COURT: OVERRULED.

A. I HAD A, A VERY STRONG OPINION ABOUT THAT MATTER. IT WAS MY UNDERSTANDING THAT IT WAS INAPPROPRIATE AND ACTUALLY ILLEGAL FOR TAX FUNDS, WHICH SINCE WE HAD A CO-MINGLED GENERAL FUND, ANY FUNDS THAT THE HOSPITAL HAD WERE, WERE THUS CONSIDERED TAX FUNDS, FOR THOSE FUNDS TO BE USED TO FINANCE ANY PRIVATE ENTERPRISE.

Q. DID YOU COMMUNICATE YOUR OPINION TO MR. CADDICK?

A. YES, I DID.

Q. DURING 1993, DID WEST VOLUSIA HOSPITAL AUTHORITY COLLECT ANY MONEY FROM THE FEDERAL GOVERNMENT?

A. YES. THEY COLLECTED SIGNIFICANT FUNDS. MOST HEALTH CARE ORGANIZATIONS COLLECT A MAJORITY OF THEIR FUNDS FROM PROGRAMS THAT ARE FUNDED BY THE FEDERAL GOVERNMENT.

Q. AND WHEN YOU SAY A LOT OF MONEY, COULD YOU GIVE US A GENERAL ROUGH IDEA, DURING 1993, HOW MUCH MONEY WAS COLLECTED FROM THE FEDERAL GOVERNMENT, LET'S SAY IN MEDICARE ALONE?

A. BETWEEN 10 AND 15 MILLION DOLLARS.

Q. NOW, APART FROM THE LEGALITY OF THE LOAN, DID YOU EXPRESS ANY OPINION AS TO THE ADVISABILITY OF IN TERMS OF RISK OF MAKING SUCH A LOAN?

MR. HORWITZ: EXCUSE ME, YOUR HONOR. I'M GOING

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[p. 620] A. NO, SIR, YOU DID NOT.

Q. DID YOU HAVE AN OPPORTUNITY TO READ THE PRICE WATERHOUSE AUDIT?

A. YES, I DID.

Q. AND ISN'T IT TRUE THAT PRICE WATERHOUSE COMMENTED ON THE LOAN, BUT DID NOT COMMENT THAT IT WAS ILLEGAL?

A. THAT IS CORRECT.

Q. AND IS IT YOUR TESTIMONY THAT IF PRICE WATERHOUSE THOUGHT THAT IT WAS ILLEGAL, THEY WOULDN'T HAVE SAID SOMETHING?

A. NO, THAT WAS NOT MY TESTIMONY.

Q. DID YOU ALSO HAVE AN OPPORTUNITY TO SEE A MEMORANDA FROM MR. CADDICK TO MR. POWERS, ASKING POWERS TO REVIEW THE LOAN DOCUMENTS IN RELATION TO THE 1.2 MILLION DOLLAR LOAN?

A. NO, I HAVE NOT SEEN THAT DOCUMENT.

Q. AND IN THE NORMAL COURSE OF YOUR JOB RESPONSIBILITIES, THERE WOULD BE NO REASON FOR YOU TO SEE THAT, WOULD THERE?

A. THAT'S CORRECT.

Q. IN RELATION TO THE COLLECTION OF FUNDS THAT THE WEST VOLUSIA HOSPITAL AUTHORITY COLLECTS FROM THE GOVERNMENT, YOU SAID IT WAS IN THE NEIGHBORHOOD OF 10 TO 15 MILLION DOLLARS IN THE YEAR 1993.

A. CORRECT.

[p. 621] Q. IS THAT IN RELATION TO THE HOSPITAL AUTHORITY PROVIDING SERVICES TO ITS PATIENTS?

A. THROUGH THE, THE MEDICARE PROGRAM, AND THROUGH OTHER GOVERNMENTALLY SPONSORED PROGRAMS; CORRECT.

Q. OTHER GOVERNMENTALLY SPONSORED PROGRAMS LIKE MEDICARE/MEDICAID, CHAMPUS?

A. VA.

Q. VA?

A. CORRECT.

Q. IN OTHER WORDS, THE HOSPITAL AUTHORITY, AS ANY HOSPITAL, WOULD GET PAID FOR PROVIDING A SERVICE, AND ONE OF THOSE PAYORS WAS THE GOVERNMENT?

A. THAT'S CORRECT.

Q. AND IS THAT THE MONEY THAT YOU WERE REFERRING TO?

A. YES, IT WAS.

Q. IN RELATION TO THIS MONEY THAT WAS RECEIVED, THAT WENT INTO SOME OF THE, THE WORK THAT YOU WOULD DO IN OPTIMIZING, THAT PROGRAM YOU SAID ABOUT OPTIMIZING, YOU'RE TALKING ABOUT, LIKE, WE DON'T WANT TO INCREASE, IT DOES NO GOOD TO INCREASE A PRICE OVER HERE BECAUSE IT'S A FIXED PAYMENT FROM MEDICARE ANYWAY, SO LET'S INCREASE IT SOMEPLACE ELSE?

A. THE PAYMENT DOESN'T, BUT THE CHARGE STRUCTURE DOES; CORRECT.

Q. I'M SORRY. YOU LOST ME WITH THAT ONE.

[p. 622] A. YOU SAID, DID THE PAYMENT RELATE TO THE RATE CHARGING? AND I WOULD

SAY, I WOULD SAY, NO, THAT IT'S NOT IN RELATIONSHIP TO THE PAYMENT. IT'S MORE IN RELATIONSHIP TO THE STRUCTURE OF THE RATE WHAT WAS CHARGED.

Q. SO YOU, DID I UNDERSTAND YOUR TESTIMONY CORRECTLY, YOU COULD RAISE THE FEE ON A SERVICE PROVIDED TO A MEDICARE PATIENT, YOU COULD CHARGE MORE, BUT YOU WERE ONLY GOING TO GET PAID WHAT MEDICARE WANTED TO PAY YOU?

A. A FIXED AMOUNT, CORRECT.

Q. AND THAT'S THE KIND OF PAYMENTS THAT WERE RECEIVED FROM THESE VARIOUS DIFFERENT PROGRAMS FOR THE HOSPITAL.

A. THAT WAS THE TYPE OF PAYMENTS RECEIVED FROM, FROM, FROM MEDICARE, A FIXED PAYMENT FOR SERVICES RENDERED.

Q. IN RELATION TO THE HOSPITAL AUTHORITY'S DEALINGS WITH A LETTER OF CREDIT, WERE YOU AWARE OF WHETHER THERE WAS A LETTER OF CREDIT ISSUED BY THE HOSPITAL AUTHORITY PRIOR TO THE 1.2 MILLION DOLLAR LOAN?

A. NO, I WAS NOT AWARE OF THAT.

Q. WERE YOU AWARE OF WHETHER THERE WAS ONE ACCEPTED?

A. I WAS NOT AWARE OF ONE.

Q. WAS THERE ANY, DID YOU HAVE ANY KNOWLEDGE OF SOME KIND OF ACTIVITY IN RELATION TO THE FLORIDA HOSPITAL, A JOINT VENTURE?

A. I WAS RESPONSIBLE FOR RUNNING A, A MODEL WHICH

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[Testimony of Mark VanFleet]

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[p. 629] Q. AND DO YOU KNOW WHETHER OR NOT IT WAS TAKEN TO MR. VANFLEET?

A. AFTER THE FACT, YES. AT THE TIME, NO, I DO NOT.

MS. COLLAZO: THAT'S ALL I HAVE, YOUR HONOR.

MR. HORWITZ: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. YOU MAY BE EXCUSED.

MS. COLLAZO: THE GOVERNMENT CALLS MARK VANFLEET.

(WITNESS SWORN BY THE DEPUTY CLERK)

MARK VANFLEET

WHO WAS FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. COLLAZO:

Q. MORNING. WOULD YOU PLEASE TELL US WHAT YOUR NAME IS AND SPELL YOUR LAST NAME.

A. MY NAME IS MARK VANFLEET. LAST NAME V-A-N, F-L-E-E-T.

Q. WHAT DO YOU DO FOR A LIVING?

A. I'M A – SELF-EMPLOYED AS A CONSULTANT.

Q. AND AT ANY TIME WERE YOU INVOLVED WITH THE WEST VOLUSIA HOSPITAL AUTHORITY?

A. YES. I WAS INVOLVED WITH MANAGEMENT THERE FOR SEVERAL YEARS.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

[p. 630] A. UNDERGRADUATE DEGREE IN PSYCHOLOGY AND SOCIOLOGY AND MASTER'S DEGREE IN HOSPITAL ADMINISTRATION.

Q. TELL US WHEN IT WAS THAT YOU FIRST BECAME ASSOCIATED WITH WEST VOLUSIA HOSPITAL AUTHORITY.

A. IN 1988.

Q. AND HOW, IN WHAT CAPACITY?

A. I WAS HIRED TO COME TO DELAND TO BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATION OF THE FISH HOSPITAL AND WORK UNDER THE DIRECTION OF THE THEN CHIEF EXECUTIVE OFFICER WHO WAS RESPONSIBLE FOR RUNNING BOTH HOSPITALS.

Q. BOTH WEST VOLUSIA MEMORIAL AND LITTLE FISH?

A. YES.

Q. AND HOW LONG WERE YOU IN THAT POSITION?

A. UM, ABOUT SIX MONTHS.

Q. AND THEN WHAT HAPPENED?

A. THE BOARD TERMINATED THE ADMINISTRATOR WHO HAD HIRED ME AND PUT ME IN A POSITION OF ACTING ADMINISTRATOR FOR A FEW MONTHS AND THEN MADE ME RESPONSIBLE FOR THE OPERATIONS AND EVENTUALLY GAVE ME THE TITLE OF CHIEF EXECUTIVE OFFICER.

Q. AND WHAT WERE YOUR DUTIES?

A. MY GENERAL RESPONSIBILITIES WERE FOR THE OVERALL OPERATION OF THE AUTHORITY THAT INCLUDED THE HOSPITAL AND SOME OF THEIR OTHER OPERATIONS.

Q. AND WHAT WOULD YOU DO WHEN YOU SAY THE OVERALL [p. 631] RESPONSIBILITY? COULD YOU JUST GIVE US A LITTLE MORE DETAIL?

A. WHEN I BECAME CHIEF EXECUTIVE, I REALLY REPORTED TO THE AUTHORITY AND WAS RESPONSIBLE FOR THE – CARRY OUT THE ACTS OF THE, OF THE AUTHORITY AS IT CAME TO MANAGEMENT, WHETHER IT WAS MEDICAL STAFF, FINANCE OR OPERATIONS.

Q. YOU'RE DESCRIBING THE AUTHORITY. CAN YOU TELL US WHAT THAT IS?

A. THE WEST VOLUSIA HOSPITAL AUTHORITY IS A FIVE-MEMBER BODY ELECTED TO FOUR-YEAR TERMS, OUT OF THE GEOGRAPHIC AREA OF WESTERN VOLUSIA COUNTY. THE AUTHORITY HAS EXISTED 30-SOME YEARS. IT'S, THE BOARD IS DIRECTLY ELECTED BY THE PUBLIC. IT'S ONE OF THE FEW HOSPITAL AUTHORITIES IN THE STATE THAT HAS AN ELECTED BOARD.

Q. AND IS THERE A SPECIAL TAX DISTRICT?

A. YES. WEST VOLUSIA HOSPITAL AUTHORITY IS AN INDEPENDENT TAXING SPECIAL DISTRICT THAT WAS CREATED FOR THE PURPOSE OF OPERATING THE HOSPITAL.

Q. DO YOU KNOW ROBERT CADDICK?

A. YES.

Q. HOW DID YOU FIRST COME TO MEET HIM?

A. BOB CAME TO THE AUTHORITY. HE WAS HIRED BY THE THEN TWO FINANCE PEOPLE AT THE HOSPITAL. AND CAME IN TO WORK AS THE INTERNAL AUDITOR FOR THE HOSPITAL AUTHORITY.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,	
PLAINTIFF,	**CASE NO: 95-239-CR-ORL-22**
VS.	**ORLANDO, FLORIDA JULY 18, 1996**
JEFFREY ALLAN FISCHER,	
DEFENDANT.	

TRIAL PROCEEDINGS

BEFORE THE HONORABLE ANNE C. CONWAY
UNITED STATES DISTRICT JUDGE, AND A JURY

[Testimony of Michael Stephan Grable, MD]

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[p. 862] A. NO, THAT'S CORRECT.

Q. JUST THAT SMALL PORTION?

A. THAT'S RIGHT.

Q. AND MR. VANFLEET WAS THERE.

A. YES.

Q. NOW, THOSE THREE INDIVIDUALS WERE FULL-TIME EMPLOYEES. THEY WERE THERE ALL THE TIME.

A. YES.

Q. WORKING HOURS?

A. CORRECT.

Q. IN ADDITION TO THOSE INDIVIDUALS WHO WERE IN-HOUSE, THERE WAS ALSO THE, THE ACCOUNTING FIRM OF PRICE WATERHOUSE ON, RETAINED TO DO AN AUDIT; IS THAT TRUE?

A. THAT'S CORRECT.

Q. YOU SAY THAT THE FIRST TIME YOU SAW MR. POWERS' OPINION WAS AT OR ABOUT THE TIME THE OPINION IS DATED?

A. YES.

Q. AND WHAT'S THE DATE?

A. IT'S MARCH 22ND, '94.

Q. IN ADDITION TO THE OPINION IN WRITING, ISN'T IT ALSO TRUE THAT MR. POWERS WOULD HAVE DISCUSSED HIS OPINION WITH THE BOARD?

A. YES.

Q. AND THOSE DISCUSSIONS TOOK PLACE SOMETIMES AT BOARD MEETINGS.

[p. 863] A. THAT'S CORRECT.

Q. WHEN I SAY BOARD MEETINGS, COMMISSION MEETINGS?

A. RIGHT.

Q. ISN'T IT TRUE THAT MR. POWERS' OPINION, AS STATED IN WRITING AND ORALLY TO THE BOARD, WAS THAT THE LOAN WAS NOT ILLEGAL UNDER THE LAWS OF THE STATE OF FLORIDA?

A. THAT'S TRUE.

Q. IT WAS ALSO HIS OPINION THAT IT WASN'T A GOOD BUSINESS DECISION.

A. THAT'S CORRECT.

Q. THAT WAS EVERYBODY'S OPINION, WASN'T IT?

A. THAT'S CORRECT.

Q. AND ISN'T IT ALSO TRUE THAT PRICE WATERHOUSE, WHEN THEY DID THEIR AUDIT AND PREPARED THE WRITTEN AUDIT, MENTIONED THIS LOAN.

A. YES.

Q. AND IN MENTIONING THE LOAN, HOWEVER, THEY, ACCOUNTANTS, DID NOT SAY IT WAS ILLEGAL, DID THEY?

A. THEY DID NOT.

Q. YOU HAD AN OPPORTUNITY TO MEET WITH MR. JOHN, AND I MAY NOT BE PRONOUNCING THIS RIGHT, MCGULKY (PH) OF PRICE WATERHOUSE?

A. YES.

Q. MR. MCGULKY WAS ONE OF THE AUDITORS WHO, ONE OF THE ACCOUNTANTS WHO WORKED ON THE AUDIT.

[p. 864] A. THAT'S RIGHT.

Q. YOU MET WITH HIM, AND ONE OF THE THINGS THAT WAS DISCUSSED WAS THIS LOAN; ISN'T THAT CORRECT?

A. YEAH. AT THE TIME OF WHEN THEY PRESENTED THE AUDIT TO THE INDIVIDUAL BOARD MEMBERS.

Q. YES. NOT DURING THE TIME THE LOAN WAS MADE, BUT AFTER PRICE WATERHOUSE HAD CONDUCTED ITS AUDIT.

A. THAT'S RIGHT.

Q. AND ISN'T IT TRUE THAT IN THE DISCUSSION WITH MR. MCGULKY CONCERNING THE LOAN, HE DID NOT SAY THAT THE LOAN WAS ILLEGAL?

A. THAT'S CORRECT.

Q. THE REASON THAT MR. CADDICK WAS GIVEN THIS CHANGE IN AUTHORITY ON INVESTMENTS WAS TO IMPROVE THE RETURN ON THE INVESTMENTS; ISN'T THAT TRUE?

A. THAT'S TRUE.

Q. AND THAT WAS TO BENEFIT THE HOSPITAL AUTHORITY, WASN'T IT?

A. YES.

Q. AND ISN'T IT TRUE THAT CADDICK HAD STATED THAT HE THOUGHT THE LOAN WAS, WAS LEGAL AND REASONABLE?

A. I DON'T REMEMBER THOSE SPECIFIC STATEMENTS, BUT THAT WAS THE IMPRESSION I GOT.

Q. THE IMPRESSION?

A. RIGHT.

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[Excerpt Of Argument For Judgement Of Acquittal
By Mark L. Horwitz, Counsel For Jeffrey Fischer]

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[p. 884] AS FAR AS THE CONSPIRACY COUNT, THE SAME PROBLEM APPLIES. THEY SAY THAT THERE IS A CONSPIRACY TO VIOLATE THESE SAME STATUTES AND YET THERE IS NO PROOF THAT THE AGREEMENT OCCURRED PRIOR TO THE LOAN BEING GIVEN.

THE WIRE FRAUD, OBVIOUSLY, RESTS ON THE SAME FACTS. AS FAR AS THE MONEY LAUNDERING IS CONCERNED, THE REQUIREMENTS FOR MONEY LAUNDERING UNDER 1957 IS THAT THERE IS A TRANSFER OF FUNDS IN A BANK OVER $10,000, AND THAT THAT TRANSFER WAS DONE KNOWINGLY OF, OF PROCEEDS DERIVED FROM A CRIMINAL ACTIVITY. I SUBMIT TO YOU THAT THE KNOWING REQUIREMENT IS THAT MR. FISCHER HAD TO KNOW THAT WHEN THE 1.2 MILLION DOLLAR LOAN CAME, THAT THAT LOAN AND THE PROCEEDS OF THAT LOAN WAS ILLEGAL. AND THAT EVIDENCE ON THAT IS NONEXISTENT.

THE EVIDENCE ON THAT IS KRAMER WENT OUT TO ASIA FIRST, AFTER A LONG RELATIONSHIP WITH MR. REICHENBERGER, AND IT APPEARED TO BE A GOOD BANK TO HIM. HE NEVER SAID ANYTHING TO THE CONTRARY TO MR. FISCHER. SO THERE IS A LACK OF ANY EVIDENCE TO PROVE THAT IN 1993, WHEN THESE LOAN PROCEEDS WERE TRANSFERRED, THAT MR. FISCHER HAD ANY KNOWLEDGE THAT THE BANK WAS NO GOOD, THAT THE LOAN

WOULD NOT BE REPAID, THAT THEY INTENDED TO DEFRAUD THE BANK, OR THAT MR. CADDICK WAS BRIBED TO GET THE LOAN.

FINALLY, AND I'M GOING TO THROW THIS OUT TO [p. 885] YOUR HONOR, AND IT'S IT'S NOT REAL CLEAR. THE 666 HAS AN EXCEPTION. AND THAT EXCEPTION IS CONTAINED IN SUBPART C, I BELIEVE IT IS. THAT SAYS THAT THE STATUTE DOES NOT APPLY TO ROUTINE PAYMENTS. THE THING THAT MAKES THIS UNCLEAR IS IN THIS SETTING, THE HOSPITAL AUTHORITY, EVEN THOUGH IT IS A GOVERNMENTAL AGENCY, IS, IN FACT, FUNCTIONING AS A PROVIDER OF HOSPITAL SERVICES. AND IT PROVIDES HOSPITAL SERVICES. AND WHETHER IT MAKES MONEY OR LOSES MONEY IS NOT AN ISSUE.

THE FEES THAT IT GETS FROM MEDICAR/ MEDICAID, CHAMPUS, AS TESTIFIED IN THIS TRIAL, THEY ARE SET FEES. WHETHER THE HOSPITAL MAKES MONEY OR LOSES MONEY, IT GETS ITS SET FEES. AND I WOULD SUBMIT THAT IT'S VERY SIMILAR TO ANY OTHER BUSINESS TRANSACTION.

NOW, THE CASES ON THIS DON'T COME RIGHT OUT AND SUPPORT MY POSITION. THERE'S DICTA THAT WOULD BE AGAINST MY POSITION. I'M GOING TO TELL YOU THAT. BUT I BELIEVE THAT THIS KIND OF ACTIVITY, EVEN THOUGH IT IS A GOVERNMENT AGENCY, IS NOT THE KIND OF GRANT OR LOAN OR PAYMENT THAT IS COVERED. THIS COULD JUST AS WELL BE FLORIDA HOSPITAL OR, OR ORMC, OR ANY OTHER, OR ANY PRIVATE HOSPITAL OR ANY PRIVATE BUSINESS THAT THE GOVERNMENT SAYS, I'M

GOING TO PAY YOU TO PROVIDE A SERVICE, WHETHER YOU MAKE MONEY OR LOSE MONEY, WHETHER SOMEBODY STEALS EVERY CENT YOU HAVE. LIKE THE MAN SAYS, [p. 886] IF THE GUY GOES IN WITH PNEUMONIA, THEY'RE GOING TO GET THE SAME DOLLAR FIGURE NO MATTER WHAT.

SO I THINK, TECHNICALLY, THAT THEIR EXCEPTION TO THIS STATUTE IN THIS PARTICULAR CASE MAY APPLY, WHICH WOULD REMOVE 666 FROM ITS APPLICATION IN THIS CASE. BUT I WANT TO TELL THE COURT CANDIDLY I DON'T HAVE ANY CASES RIGHT ON POINT TO SUPPORT THAT POSITION.

FOR THE REASONS STATED, YOUR HONOR, I WOULD ASK THAT THE COURT ENTER A JUDGMENT OF ACQUITTAL AS TO EACH AND EVERY COUNT. AND I'LL GIVE THE COURT THESE CASES. YOUR HONOR, I'M SORRY, I DON'T HAVE ANOTHER COPY OF BROWN. THAT'S 79 F. 3RD 1550. AND I ONLY HAVE ONE COPY OF BONITA.

MR. FUSSELL: I'VE GOT ONE.

MR. HORWITZ: YOUR HONOR, IF I SAID 202, I MEANT TO SAY 18 US CODE 201. THAT'S THE BRIBERY STATUTE.

THE COURT: MS. COLLAZO?

MS. COLLAZO: YES, YOUR HONOR. YOUR HONOR, WHAT WE, IN FACT, HEARD IS CLOSING ARGUMENT BUT NOT A LEGAL JUSTIFICATION TO DISMISS THIS CASE. WHAT WE'RE HEARING IS AN ARGUMENT FOR A JURY TO SAY, WELL, THE GOVERNMENT HASN'T PROVED FRAUD. THERE'S A LOT,

AMPLE, OVERWHELMING EVIDENCE OF FRAUD IN THIS CASE.

THE CHARGE IN COUNT ONE SAYS THAT THE DEFENDANT OBTAINED BY FRAUD 1.2 MILLION DOLLARS. THE GOVERNMENT

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